

January 19, 1979

Dear Bob,

I have attached for your information a copy of an informal memorandum I prepared for record purposes based on my discussion with Peter Shane of the Office of Legal Counsel, Department of Justice, relating to the FBI's request for Department concurrence in maintaining SCI turndown information.

Although Shane's comments are not official, I believe his research and interpretation of the Privacy Act is probably correct. It would seem to me very likely in the immediate future we will be officially advised that the Department does not concur. I thought that you might like to have this advance information for review by yourself or Dick Hannah, or anyone else concerned with this problem, and perhaps by your General Counsel.

If there are any contradictory arguments, I would be glad to relay them to Shane, or, in the event the official Department response is received, to respond as Security Officer of the FBI in behalf of the Security Committee.

Regards,

FBI review completed



David Ryan
FBI SECOM Member

Enclosure

1/18/79

SENSITIVE COMPARTMENTED INFORMATION
REPOSITORY FOR DENIALS

On this date I discussed with Mr. Peter Shane, Office of Legal Counsel, Department of Justice, my request furnished to the Department by memorandum dated 12/15/78, that the Department concur in this Bureau's plan to maintain, in behalf of the Intelligence Community, a control file at FBI Headquarters as a repository for Sensitive Compartmented Information (SCI) turn-down information.

Mr. Shane advised he had conducted considerable research regarding the Bureau's recommendation and that, although he concurred with the objective and motivation of the request, he was concerned that the maintenance of such a file would create problems because of the impact of the Privacy Act of 1974 (5 United States Code 552a). Shane advised Subsection (c) under Agency Requirements indicates each agency that maintains a system of records shall (1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by Executive Order of the President. Also, in this same subsection under (3), it is required that each agency that maintains a system of records shall "inform each individual whom it asks to supply information on the form which it uses to collect the information or on a separate form that can be retained by the individual" of such information and the authority for maintaining the information, the purpose for which it is intended, the routine uses which may be made of the information, and the effects, if any, of not providing all or any part of the requested information. Thus, Shane interpreted that it would be necessary for the Intelligence Community to alert each individual of the likelihood the information would be maintained by the FBI and to inform him as above. This, according to Shane, would probably make the maintenance of the material by the FBI impractical as it was his understanding that often the Intelligence Community does not desire individuals under consideration for access to compartmented information to be so alerted.

Shane commented Subsection (e) (1) above would appear to enable CIA to maintain the SCI turndown information. It was Shane's contention that the National Security Act of 1947 enables

CIA to provide administrative support to the Director of Central Intelligence (DCI). According to Shane, in fact, this is being done by the Compartmented Information Branch at CIA, which supports the DCI by maintaining, in behalf of the Intelligence Community, information relating to SCI access authorizations.

Also, Shane pointed out that Subsection (j) of the Privacy Act, under General Exemptions, enables the head of any agency to promulgate rules to exempt a system of records within the agency from any part of the Privacy Act, with certain exceptions and, in this regard, records maintained by the CIA, according to Subsection (j) (1), are exempt. On the other hand, Subsection (j) (1) would allow an agency of the character of the FBI to exempt only records relating to the enforcement of criminal laws and investigations, etc.

Based on the above, Mr. Shane stated he anticipated the Department's recommendation would be that the FBI not maintain the records and that the Intelligence Community consider having the turndown records maintained by the Compartmented Information Branch at CIA. Mr. Shane stated his research will be reviewed by appropriate Department officials and the Bureau officially advised in the near future.